

Please return
Attorney General

IN THE MATTER OF AN INVESTIGATION
UNDER SECTION 46 OF THE POLICE ACT,
R.S.O. 1950, CHAPTER 279, AS TO THE
ARREST AND DETENTION OF ROBERT WRIGHT
AND MICHAEL GRIFFIN.

R E P O R T.

TO:

THE HONOURABLE THE ATTORNEY GENERAL
FOR THE PROVINCE OF ONTARIO.

Under date of October 27, 1954, and pursuant to Section 46 of The Police Act, R.S.O. 1950, Chapter 279, you required me to investigate, inquire into and report to you upon the conduct of Constables William Chambers, Roy Best, and any other constables or police officers, members of the Toronto Police Force who had any dealings with or were involved or concerned in the arrest and detention on Saturday, October 23, 1954, of Robert Wright and Michael Griffin.

I have completed that investigation and this is my report:

I held sittings which were open to the public at the Parliament Buildings on November 4, 5, 8, 9, 10, 11 and 12. I was assisted by Mr. A. A. Macdonald, Q.C., and Mr. A. M. Austin, as Counsel appointed by you in that behalf; the Honourable A. W. Roebuck, Q. C., and Mr. James Trotter appeared as Counsel for The Toronto Police Association; Mr. Fred Campbell, Q.C., appeared on behalf of The Police Commission of the City of Toronto; Mr. C. L. Dubin, Q.C., and Mr. J. D. Templeman appeared as Counsel for Robert Wright and Michael Griffin.

The oral evidence having been completed, at the request of counsel for Wright and Griffin, and with the concurrence of all other counsel, I attended at the studios of CBLTV in Toronto, accompanied by all counsel, Wright, Griffin and representatives of the Toronto Police Force, and viewed a portion of the televised recording of the football game at Varsity Stadium on the Saturday afternoon in question.

On November 24, counsel for all parties (on this occasion Mr. E. A. Goodman acting on behalf of Wright and Griffin) attended before me in a court room at Osgoode Hall and submitted their respective arguments.





Digitized by the Internet Archive
in 2011 with funding from
Ontario Council of University Libraries

<http://www.archive.org/details/b249607>

All the oral evidence and the arguments were reported and subsequently transcribed, and the transcript is forwarded to you herewith.

The story of the events which led to the arrest and detention of Wright and Griffin commences in Varsity Stadium where a football game was being played that Saturday afternoon between the Toronto Argonauts and the Montreal Alouettes. It was a very exciting and thrilling game and the stadium was filled to its capacity.

Among the spectators were Wright and Griffin and two friends of theirs, by name Robert Whitlock and Henry Kascmar. Their seats were in Section 8 of the grandstand on the east side of the field, Wright and Kascmar in seats 18 and 17, row G, and Whitlock and Griffin in seats 19 and 20, row H. A plan of the stadium was filed in evidence as Exhibit 1. By referring to that plan it will be observed that those seats are directly behind the Varsity bandstand, and six and seven rows up therefrom. Their location in reference to that bandstand, as will later appear, is of some importance.

Close to the end of the last quarter of the game, Pfieffer of the Argonauts made a touchdown at the south end of the field. Prior to that the Argonauts were trailing in the score; the touchdown put them ahead.

A large number of spectators in the stands and toward the south end of the field, who were obviously rabid supporters of the Argonauts, carried away with excitement and enthusiasm, left their seats and rushed out on to the field to congratulate the Argonaut players. As a result, the game was held up until the members of the Toronto police force then on duty, the University police and the ushers, cleared the field sufficiently so that the convert could be kicked. As soon as the convert would be kicked the game would be ended. When the convert was kicked the ball went into the lower end of the stands behind the goal posts. There was a wild scramble for the ball in which spectators and some players participated.

Many other spectators, not particularly interested in getting possession of the ball, also surged out on to the field behind the goal line in a jubilant demonstration. Other more placid spectators left their seats and moved out on to the field in the direction of the several exits from the stadium.

It is at this point in the story that we first hear of a man, never identified by name and who has since disappeared, who became involved in a fracas at the south end of the field in the area between the goal line and the track which runs around the perimeter of the field. He was sometimes referred to in the evidence as the mysterious Mr. X. I hasten to say that there can be no doubt as to this -- that man was neither Wright nor Griffin nor either of their companions. They remained in their seats or in the grandstand in the area of their seats for some time after that fracas started.

On duty in the stadium were Chief Robb of the University police force and five members of that force under him, and Sergeant Surfleis of the Toronto city force, and eight police constables under him. The only members of the Toronto city force who had anything to do with that fracas or the events that followed it were Police Constables Lister, Chambers, Best and Spence.

When we first hear of Mr. X, Messrs. Cowie and Gumbrell of the University force had hold of him, one by each arm, trying to escort him off the field. He appeared to be intoxicated and had, I assume, done something objectionable. He was a very large man and apparently very powerful. He knocked Gumbrell to the ground, thereby temporarily incapacitating him. Cowie still held him. P. C. Lister came to Cowie's assistance and grabbed X, and the two officers struggled with him. Lister attempted to handcuff X, and, to quote from Lister's evidence, "that seemed to spark the crowd", some of whom verbally indicated some sympathy with X. A very large

number of spectators gathered in the area around the struggling ~~They~~ threesome and at one stage someone grabbed Cowie's hat and it was ~~were~~ tossed around. There was some evidence connecting Wright with that particular act of rowdyism. One witness, who had not previously known him, positively identified him as the man who grabbed Cowie's hat. That witness, though honest, I find was clearly mistaken. Another witness who did know Wright saw that incident and testified that man was not Wright. Wright in evidence denied that he was the man. That first witness testified that the incident occurred behind the goal line. The television picture shows the crowd some yards in front of the goal line; the band is still playing and there is an abundance of most credible evidence that neither Wright nor any of his companions left the grand stand until after the band ~~had~~ had stopped playing and were putting away their instruments.

As the officers Lister and Cowie struggled with X, they moved northerly across the goal line and when they were about the fifteen yard line Cowie collapsed and fell to the ground. As they moved forward so did the crowd around them, and the crowd kept getting larger.

Chambers had seen Cowie's hat tossed in the air and he moved, no doubt quickly, into the centre of the crowd. He arrived there just a moment or so before Cowie collapsed. He had time to grab X by the arm, but when Cowie fell he let go of X and turned his attention to Cowie. The crowd was excited and milling around and there was much noise and shouting. It seems plain that only those in the core of that crowd could have seen what was happening.

I now leave that crowd and return to Wright and Griffin and their companions.

I am thoroughly satisfied that by the end of the game they were intoxicated. Between them they had consumed fifty-two ounces of whisky during the game and Wright and Griffin had each drunk about one ounce at Wright's home before they left for the game. As the game progressed they became noisier and a nuisance to those around them, but they were not abusive. They were in a happy,

lively mood. At half time they each ate several "hot dogs." They are all physically big men. Their physique, the fact that they were drinking in the open air and the food which they consumed were factors which apparently lessened the effect which the large amount of liquor they consumed would otherwise have had upon them. They were not steady on their feet. One witness described them as being "a little drunk." Other witnesses who had previously known them and who met them after they left their seats and while they were still in the stadium testified that they showed no signs of drunkenness. It is not without some significance that none of the police officers who had anything to do with them at the stadium made any move to arrest them for drunkenness.

On all the evidence I find that their state of intoxication was such that while they were able to walk not too unsteadily and to observe what was going on about them and to carry on in the habitually functional manner, their powers of perception, understanding and appreciation were definitely impaired. Their reactions to abnormal conditions surrounding them were likely to be entirely out of harmony with those of a man in his sober senses under similar circumstances. They had reached a high degree of exhilaration and were fired by an impulse for open action. Their emotional state was such that they would not understand the reasonableness of any objection to their conduct and would likely resent any interference with them. The reasonable policeman seeing them in normal surroundings instead of arresting them would probably admonish them to go home lest they might get into trouble. That is probably where they would have gone if curiosity had not later possessed them.

They lingered in or near their seats for some time after the game had ended and then walked down toward the bottom of the stand intending to cross the field. In doing so they passed close

to the bandstand. The bandsmen were packing their instruments. The four stopped while Whitlock talked for a few minutes with one of the bandsmen with whom he was acquainted. Then they continued across the field in the direction of the players' quarters on the west side. Wright had a friend who had something to do with the Argonaut team, and he wanted to see and talk to him,

When they were about a quarter way across the field they observed the crowd at the south end. From where they then were they could not see what was happening in that crowd but surmised it was a jubilant crowd around some of the Argonaut players, and they were in a mood for jubilation. They went to it, but in doing so Wright and Whitlock became slightly separated from Griffin and Kascmar. When Cowie collapsed and fell to the ground there was grave danger that he might be trampled upon. Chambers and Lister turned their attention from Mr. X to protect Cowie. In due course they were joined by Best and Spence, and assisted by some ushers and spectators, they all attempted to keep the crowd back. A cordon was formed about Cowie.

There were various estimates given in evidence as to the size of that crowd and in my opinion it might reasonably be concluded that there were 250 to 300 people in it. There was much pushing and shouting, and I am satisfied that in that crowd there were, unfortunately, a number of persons who were demonstrative against the police, not because of malice or rancour against them, but because of a warped idea of what constituted legitimate fun. Here were a very few policemen attempting, in the legitimate exercise of their authority, to restrain and control a large and boisterous crowd, many of whom had been attracted to the area out of curiosity, and who, unless they were at the core of that crowd, could not possibly know of the emergency that had arisen by reason of Cowie's collapse. Interspersed among them were others who, seeing the police greatly outnumbered, thought it would be sport to push and shove against them.

Wright and Whitlock pushed their way toward the centre of that crowd. Whitlock got close to the cordon. Wright was behind him. He could not see what was going on inside that cordon, but on his own admission in evidence Whitlock told him that an officer was on the ground. Wright kept pushing and shoving notwithstanding the request of the police to stand back. Suddenly someone pointed at Wright and shouted "That's the man." Simultaneously, Chambers reached over and grabbed Wright and shortly thereafter Wright was thrown to the ground.

Chambers' evidence was that Wright had got right up to the cordon and in that position began arguing with him and yelled "Why don't you damn cops get off the field and let us have our fun?"

Another witness, Moon, was one of the men forming the cordon. According to him Chambers had to push past him to grab Wright, who was not right at the cordon, but two deep from it; and having grabbed him pulled him into the open area. Wright made a slight struggle and Chambers threw him to the ground. Moon did not hear the statement attributed to Wright by Chambers and thought if it had been made as Chambers said it was he would have heard it.

Chambers stated in evidence that having grabbed Wright he began ushering him to the rear of the crowd intending to leave him there; Wright offered no physical resistance, but was verbally protesting; that when they were part way back in the crowd, Griffin, whom he had not seen before, grabbed him and said: "Let go of him, you bastard, or you will get more than you are looking for;" that while he was trying to hold Wright and get loose from Griffin, Best came to his assistance and grabbed Wright and in the struggle that ensued Wright was thrown to the ground.

Best partially corroborated Chambers. He stated that he was inside the cordon and when he first saw Wright Chambers had hold

of him; that he saw Griffin take hold of Chambers by the arm as if trying to pull him away from Wright.

Of all the police officers who gave evidence before me of what happened at that time I was most favourably impressed by P. C. Lister. His first knowledge of Wright was when he saw him pushing his way toward the centre of the crowd. He momentarily lost sight of him. He next saw him when Chambers had him by the wrist, and was trying to move him. They were struggling. Best came to Chambers' assistance, took Wright by the left arm and put a hammer lock on him, and Chambers let go. Best and Wright struggled and both fell. Lister saw no one coming to Wright's assistance. From close range he saw Chambers struggling with Wright before Best came to Chambers' assistance, and I am satisfied that if anyone had interfered with Chambers Lister would have seen it. Lister impressed me as a very observant and level headed officer.

There were other witnesses in the immediate area at that time who saw Chambers and Wright together before Wright was thrown to the ground. None of them saw anyone attempting to interfere with Chambers.

Griffin and Kascmar were together in the crowd. Despite their intoxicated condition I believed them when they testified that they did not even see the fracas between Chambers and Wright. The first they heard about it was when they later rejoined Wright and Whitlock out in the field, and the four of them were walking toward the north gate of the stadium. Wright then told them that an officer had grabbed him in the crowd.

I am driven to the conclusion, on the evidence thus far summarized, that I should not accept the evidence of Chambers and

Best that Griffin interfered with Chambers. It is my opinion on that evidence that Griffin was not even close to the area where the Chambers admitted in evidence that he could have been unable to identify Mr. X.

scuffle between Wright and those officers took place. Griffin is a very big man with red hair and pink cheeks. By reason of his stature he would stand out in any ordinary crowd, and if he had been in that immediate area Lister and other witnesses who saw that scuffle could scarcely have avoided seeing him.

Later herein I will refer with some detail to the evidence showing that, although Chambers and Best and Spence later waited at the Bloor Street exit from the stadium hoping to catch Wright on his way out, and did there arrest him, neither Chambers nor Best, both of whom also saw Griffin there, made any effort to arrest him. If there was justification for arresting Wright at that time, there certainly was equal justification for arresting Griffin at the same time. Their failure to arrest him is consistent only with a conclusion that at that time he had done nothing to justify his arrest.

The fact that I cannot accept the evidence of either Best or Chambers with respect to Griffin leads me to doubt the evidence of Chambers that Wright was any more vocal in that crowd than others were.

Throughout my investigation there was much evidence indicating that Chambers grabbed Wright because someone pointed to him and yelled "That's the man". There was an abundance of evidence that those words were spoken. Chambers admitted that he heard them and simultaneously reached for Wright. These words indicate to me that whoever spoke them must have meant to thereby identify Wright as Mr. X. Chambers in his evidence stated that these words meant nothing to him, and had nothing whatsoever to do with his grabbing Wright. It will be recalled that at an earlier stage Chambers had hold of Mr. X when he went to Lister's assistance. However Chambers admitted in evidence that he would have been unable later to identify Mr. X.

Griffin was arrested, not at the Bloor Street exit, but further along the street at a police call box, and he and Wright were taken first to No. 5 Police Station, and later to No. 1 station. While at No. 5 station, word arrived that Cowie had died, and Chief Robb of the University police officers was brought there to see if either Wright or Griffin was the man I have referred to as Mr. X. While at No. 1 station Detective Nicolucci gave instructions that neither Wright nor Griffin were to be released on bail pending the coroner's report as to the cause of Cowie's death. These are circumstances that would seem to be consistent only with the theory that it was thought that Wright might have been Mr. X.

There is another feature about Chambers' evidence that I cannot possibly reconcile with the emergency created by Cowie's collapse. Here was a surging crowd with pressure from almost every direction pushing toward its centre. Those who were trying to protect the stricken officer were greatly outnumbered. Why would Chambers weaken the resistance against that crowd to grab a vociferous drunken man, who, no doubt, was doing his share of the shoving and try to push him against the pressure of that crowd, and through it, merely to leave him on the outskirts. Surely he could not have given any thought to what might happen to Cowie in the meantime. Chambers stated in evidence, not once, but several times, that when he grabbed Wright he had no intention of arresting him.

Of course, if when he grabbed Wright he thought he had Mr. X, then it is understandable that he would want to get him away from the crowd and arrest him.

When Wright was thrown to the ground Best landed on top of him with one knee on his head and another on his chest or stomach. Others in the crowd nearby hollered to let him up. According to Best, Wright said "I've had enough," and then he released him, and Best and Chambers returned to the side of Cowie.

Chambers and Best both testified that they later saw Wright, not in the middle of the crowd where he had been released, but on the outside edge of the crowd, pushing and calling out "Heave boys, heave." Wright denied that conduct. There was other evidence that some person or persons called out those words, but no one other than Best and Chambers identified Wright as that person, or one of those persons. Although there may be some doubt about it I am inclined to accept that part of these officers' evidence. That type of conduct by Wright was consistent with the conduct of himself and his companions as described by a number of spectators who were near them in the grandstand toward the end of the game.

A St. John's Ambulance Corps arrived at the scene with a stretcher; a passageway through the crowd was made for it and Cowie was carried off the field.

The crowd then dispersed.

Chambers in his evidence stated that when Cowie was removed he looked around for Wright and Griffin but could not find them and that he and Spence and Best went to No. 1 gate at Bloor Street to watch for them among the spectators who would be leaving by that gate. He said "Our main effort was to see Wright and Griffin again and arrest them".

Wright and Griffin and their companions did pass through that exit and Chambers and Best immediately arrested Wright but they made no move to arrest Griffin.

Best in his evidence described that arrest as follows:-

" We then went over to Wright who at this time was with three other chums. One of the men who was with him at that time was Griffin. P.C. Chambers took hold of one arm and Spence took hold of the other arm. At this time there was an argument."

By "an argument" he explained that Wright and "his buddies" were protesting against Wright's arrest and wanted to know why he was arrested. According to Best, Griffin did most of the protesting.

Chambers and Spence then took Wright back inside the gate. The other three made a move to follow them, still protesting but not making any attempt to physically interfere. Best stood in the gateway with his arms extended indicating by his actions and very firm language that they could not pass. They made no effort to do so. They stood in front of the gate stating that they wanted to be witnesses and Best directed them to No. 5 police station where Wright would be taken. I am not in any doubt that they were very voluble and one or more of them said "Why should we go to No. 5", to which Best, on his own evidence, replied: "I don't care where you go; just get out of here." Best threatened to arrest Kascmar for being drunk if he did not leave but he made no move to arrest Griffin.

I pause to observe that if Best's story was true that he had earlier seen Griffin physically interfering with Chambers on the field he would have arrested him instead of telling him and his companions to go away. In his evidence he made no effort to explain why he did not arrest him.

Chambers, on the other hand, stated that at the moment he arrested Wright he must have failed to see Griffin. If Best's evidence is true then Chambers could not have avoided seeing Griffin. If it were possible to give Chambers the benefit of the doubt and conclude that he might not at that time have seen Griffin it is impossible to explain his later failure to arrest him, that is if his story about Griffin having interfered with him on the field and that for that reason he and his fellow officers were waiting at the gate hoping to locate both Wright and Griffin and arrest

both of them was true.

Chambers and Spence, having taken Wright inside gate No. 1, remained there a short while and then went out another nearby gate onto Bloor Street and easterly along Bloor Street to a police call box. There one of the officers unsuccessfully attempted to telephone for a police van. They could not raise an answer. While they were at that point, Griffin, Kascmar and Whitlock discovered them and came up to them. I let Spence tell the story of what, according to him, there occurred,-

" A. While we were standing there Griffin and his two friends came over to the box.

Q. Yes?

A. Griffin started mingling in between Wright, Chambers and myself.

Q. Mingling in between you?

A. Attempting to come in between Wright and myself and Chambers.

Q. Did he get in between Wright and ---

A. No, sir, we were holding Wright right by the arms by this time. He couldn't get in between us.

Q. Who was holding Wright?

A. Chambers had one hand and I had the other; at least one wrist. And I had the other.

Q. Yes?

A. Griffin was protesting Wright's arrest. And he at one time grabbed Wright's coat and said 'C'mon, Bob, we're going home.'

Q. Yes?

A. I told them that Wright was going nowhere except with us and the best thing you can do is go home -- intending Griffin.

Q. You advised Griffin to go home?

A. Yes, sir.

Q. Yes.

MR. MACDONALD: Q. He was quite free to go home then?

A. As far as I was concerned, sir; yes.

Q. Yes.

A. He said, 'Where are you taking my friend?' I said, 'No. 5 Police Station.' He says, 'Where he goes I go.' So I again advised him to go home.

THE COMMISSIONER: Q. Yes?

A. And he says, 'I don't have to go home; nobody tells me to go home.' I said, 'Well, I'm telling you to go home.' So he says, 'Well, I'm not going.' And I said, 'Therefore you're under arrest for obstructing police.'

Q. Because he wouldn't go home?

A. Because he was annoying me. In my estimation he was annoying me while I was executing my duty.

MR. MACDONALD: Q. As the Commissioner puts it, do you agree you took him into custody because he refused to go home when you told him to?

A. Yes, sir. He had been cautioned several times previous to that to go home and leave us alone."

* * * * *

"Q. Tell me why did you arrest him?

A. He was obstructing me, sir, in my opinion ---

Q. Go slowly, please, and carefully. 'I arrested him because' --- what?

A. Because in my opinion he was obstructing PC Chambers and myself while we were performing a legal duty, a legal arrest.

Q. 'Because in my opinion he was obstructing Chambers and me in the performance of our duty'?

A. Yes, sir."

I pause again to stress that Chambers' conduct at that time is entirely inconsistent with his evidence that he and his fellow officers waited at the gate hoping to locate Wright and Griffin and arrest both. I can only conclude that they had no intention of arresting Griffin and that their stories of Griffin having interfered with Chambers is untrue.

Not being able to get a police car, Wright told the officers that his car was up on Bedford Road, a block or so from the stadium; that it could be used for their purposes. The keys to the car were given to the officers and the procession started up Bedford Road, Spence and Wright at the head, followed by Chambers and Griffin and then Kascmar and Whitlock. Best caught up with the procession just about the north side of Bloor Street.

Griffin's evidence is that he was not arrested until they were on Bedford Road, when he called out to Wright ahead of him something to the effect that Wright should sue "the bastards", meaning the police, for false arrest. In that conflict of evidence I accept the evidence of Spence. It is supported by the evidence of Mr. and Mrs. Banfield. They had been at the game and had parked their car in a parking lot some little distance from the stadium and north of Bloor Street. When they went to their car after the game due to the number of cars in the lot and the traffic generally they were delayed getting out of the lot. As they later drove westerly on Bloor Street they saw, as Mr. Banfield put it, "these two boys brought across the road (Bloor Street) with two officers." They recognized the "boys" because they had seen them in the grandstand during the game. Mrs. Banfield described Chambers as having his hand across Griffin's back as they walked along. They drove close to the sidewalk and as they were passing Chambers and Griffin Mrs. Banfield heard Chambers say, "Young man, I am not a bastard and you will eat those words." Griffin, in evidence, stated that Chambers did use those words and Chambers in substance admitted doing so.

In due course the three officers and Wright and Griffin arrived at No. 5 police station. The car was parked at the rear. They entered through the rear entrance and eventually arrived in what was described in the evidence as the reception room. A plan of that part of No. 5 police station was filed as Exhibit No. 3.

In their evidence before me Wright and Griffin stated that while they were in that reception room Wright was attacked and brutally beaten by Chambers in the presence of other officers, at least one of whom also struck him. That other officer was not identified by them by name, but, as will later appear from their description of his state of dress, he was Sergeant Crawford. Both Chambers and Crawford in their evidence denied it.

Wright's evidence was that after he and Griffin arrived in the reception room he was told to sit down on a chair and he did so; that Griffin remained standing; that "the officers" --meaning those who had brought him to the station, "stood around"; that other officers were moving in and out of the room through a door that, although he did not then know it, opened into a corridor that led to other parts of the building, including the room where Sergeant Crawford's desk was located; that Chambers began accusing him of being responsible for Cowie's death; that he (Wright) said that he had nothing to do with it and was innocent; that Chambers finally said he would probably be charged with manslaughter; that thereupon he (Wright) became very excited and said that "it was too bad that a decent citizen couldn't go to a football game without being arrested by a bunch of clowns;" and to emphasize his statement he clenched his fist and thumped the arm of his chair; that Chambers answered "So I am a clown,

am I? Well, we will see about that you bastard;" and rushed over and hit him with his clenched fist on the side of the head, knocking him from his chair to the floor in the corner of the room; that while he was on the floor Chambers kicked him in the back several times; that another officer, without a tunic (he was later identified as Sergeant Crawford) told Wright to stand up and when he did Chambers again struck him in the face with his fist, knocking him to the floor and when he was on the floor Chambers kicked him on the side of his head; that he then "rather lost track of things" but the beating continued and he "seemed to be knocked around the room for quite a few minutes," principally by Chambers; that finally they stopped beating him and he got up and sat in the chair again; that he began "babbling" at Chambers, who removed his gun belt and unbuttoned the top buttons of his tunic and said "If you want to fight, you bastard, I will fight you man to man;" that finally he (Wright) stopped talking because Griffin came over to him and told him to "be quiet and sit still."

Griffin corroborated all of Wright's story and went further. He stated that the man identified as Sergeant Crawford came into the room and ordered Wright to stand up and when he did both Chambers and Crawford struck him. Griffin stated that Wright was hit a minimum of ten times by a clenched fist and was kicked at least four times. When the beating had reached that stage Griffin stated that Best took him by the arm and led him into what was described as the bicycle room, which adjoins the reception room, and closed the door; that, while there, he could hear sounds of furniture being thrown around and "a body striking the floor and Wright saying "Stop it, leave me alone, let me up, stop hitting me"; that when those sounds ended Best opened the door and brought him back into the reception room, where he then saw Wright seated on the chair where he had originally been.

I have to come back now to Kacsmar and Whitlock. They

stated that they went by taxicab from the vicinity of Varsity Stadium to No. 5 police station. There they saw Sergeant Crawford at his desk. They asked him "What are you holding Wright and Griffin for?" to which the sergeant replied "We cannot tell you now. You will have to wait." They followed instructions and sat down. While sitting there they heard a disturbance coming from the rear somewhere which sounded like "a chair had been knocked over or a table pushed," and they heard a voice which they identified as Wright's screaming "Stop it; let me go." Immediately Crawford looked at them and said "This is not a public waiting room; you will have to wait outside." They left immediately.

Sergeant Crawford stated in his evidence that when Kascmar and Whitlock arrived at the station he knew that two prisoners had been brought in from Varsity Stadium but he had not yet seen them; they had only arrived a few minutes earlier. Kascmar and Whitlock approached his desk and Kascmar said something which Crawford did not understand. Kascmar was "definitely under the influence of liquor, his hair was pulled down over one side of his face and he was staggering and unable to talk," at least intelligibly. If it had not been for the fact that he was with another person, Crawford stated he would not have allowed him to leave.

When Crawford indicated he did not understand Kascmar, Whitlock touched Kascmar on the arm and said "I will do the talking," and he did. According to Crawford he said "There are two men brought in from Varsity Stadium; I want to see them." Crawford inquired "Who are you?" and Whitlock replied "Just friends of theirs." Crawford said "No. I am sorry, you cannot see them," and further stated in substance that he, himself, had not yet seen them. Thereupon Whitlock replied "We will wait." They made a move as though to sit down, and Crawford said in substance "This is not a waiting room," and that they would have to leave, and they left.

Crawford explained to me that if neither of those men

had been drunk and indicated that they had some legitimate business concerning the prisoners he would have permitted them to wait, but he would not permit a drunken friend of a prisoner to wait on the mere statement that the friend wanted to see the prisoner. In that attitude I think he was absolutely correct. He denied that while they were there, there were any sounds of any commotion coming from the area of the reception room.

While Wright and Griffin gave a confused story of the coming and going of the officers into and out of the reception room, the officers themselves explained their movements. There was a ring of truth to their explanations, and I accept them.

Spence stated that he did not go into the station at the same time as the others. He remained behind to lock up Wright's car.

Best stated that very shortly after he and Chambers arrived in the reception room with the prisoners, Griffin wanted to go to the wash-room. Best took him there, leaving Chambers and Wright as the only persons in the reception room. After Griffin had attended to his needs in the wash-room, Best brought him back to the reception room. At about the door leading from the corridor into that room he met Spence, who was on his way through to report to the sergeant. Best turned and accompanied Spence. That left Chambers alone with the prisoners in the reception room.

Chambers stated that while he was alone with the prisoners in that room, suddenly - and now I quote him - "Wright straightened up in his chair, doubled up his fists, brought them down on the arms of the chair and shouted, 'I am just as big as you are, and if you take off that damned monkey suit, I will clean your clock,' he jumped out of the chair he was sitting in at this time; he grabbed it by the arms, raised it up about the height of his chest with the legs facing towards me. At this time I thought he was going to hit me over the head with the chair, and I ducked to the left of it, and as he raised

it up.....I thought he was going to come at me with the chair. I ducked to the left, to his left, and grabbed him around the neck... At this time he threw the chair across the floor....As I did this I slipped and we both went to the floor with considerable force."

again

I now leave them in that position until I/locate Best and Spence. I have already stated that they had gone to Sergeant Crawford to make a report to him concerning the prisoners. It was Crawford's duty as the officer in charge of the station to book the prisoners in. Before going out to the reception room for that purpose Crawford telephoned Sergeant of Detectives Taylor and explained that there had been some sort of a disturbance at Varsity Stadium, and that there were no detectives at No. 5 station to investigate what had happened.

I interpose to say that it was as a result of that telephone message that Detective Niccolucci, about whom I shall have something to say later, arrived at No. 5 station while Wright and Griffin were still there.

There can be no doubt as to this, namely, that neither Whitlock nor Kascmar were in the room with Crawford when Best and Spence arrived there. Both Best and Spence swore that they did not see either of them there, or anywhere else in station No. 5. Kascmar and Whitlock both swore that they did not see either Best nor Spence there, but they did see Crawford. If the story told by these three officers is true then Whitlock and Kascmar had already seen Crawford and left the station.

Crawford stated that when Whitlock and Kascmar were in the station he knew that two prisoners had arrived from Varsity Stadium, but he did not know their names. He knew it not because of anything Whitlock and Kascmar said to him, but because he had learned about it in some other way. Pressed as to how he knew it he gave this explanation, namely, that Spence had stuck his head through the door leading from the corridor to the room where he (Crawford) was

at his desk and called out, "There are two prisoners here, Sergeant." It will be recalled, however, that Best swore that as he was returning with Griffin from the wash room he met Spence on his way to Crawford's desk.

Spence swore that when he first entered the reception room from the parking lot at the rear, there were only two people there, namely, Chambers and Wright, and that he continued through the reception room with the intention of going to the sergeant's desk. At the door leading from the corridor he met Best and Griffin coming back into the reception room, and Best immediately followed him to the sergeant's desk. If Spence is right, then Crawford is wrong, when he says that Spence had earlier called out to him that two prisoners had been brought in.

If Kascmar and Whitlock are to be believed, then Wright was being beaten while Crawford was still at his desk, and before he had as yet seen the prisoners; and immediately after Kascmar and Whitlock left the station Crawford must have gone to the reception room, because on the evidence of all the witnesses he was in that room at some stage of the fracas between Chambers and Wright.

Here is the story told by Crawford, Spence and Best as to their knowledge of what occurred: the telephone message to Sergeant of Detectives Taylor having been completed, the three of them started for the reception room where Crawford intended to get the prisoners' names, ages, etc. for his records; that while on their way there they heard a commotion in the reception room and, realizing that Chambers was alone with the prisoners, they hastened their steps; that when they arrived Chambers and Wright were in a tussle on the floor, about the middle of the room.

It will be recalled that in Wright's and Griffin's stories Chambers was never on the floor. Crawford, Spence and Best each swore that they made no move to physically interfere; that Crawford merely said, "What on earth are you doing down there? Get up on your feet, both of you."

Now, that statement may sound like a very silly statement for him to make in the circumstances. It is silly. What they were

doing on the floor was perfectly obvious; they were not playing peek-a-boo. Silly as it is, it is nevertheless, in my opinion, very significant. It indicates very plainly that at that moment there was no indication to those three officers that Chambers was in any danger of being hurt. If there was any such danger then there is no doubt one and perhaps all three of them would have gone to his assistance.

Best swore that seeing the two men on the floor and Griffin standing nearby, as a matter of precaution, he did usher Griffin into the bicycle room, but he did not shut the door.

In all the confusion and conflict of evidence I have decided that I should accept the evidence of Crawford, Best and Spence concerning their knowledge of the physical encounter between Chambers and Wright.

I do not accept Chambers' evidence that Wright raised the chair and threw it. If that happened it would be a remarkable coincidence if the chair landed upright. Neither do I accept the evidence of Wright and Griffin that while Wright was seated in the chair Chambers struck him with such force that he knocked Wright out of it into the corner of the room. If Chambers had done that, I should have thought that the chair would also be upset. When the three officers hurried into the reception room the chair was sliding along the floor still in an upright position. The struggle between Wright and Chambers had therefore started perhaps just a few seconds before they came into the room.

Wright would have been a fool to physically attack Chambers in the police station with other policemen nearby, and he was not so drunk that he would not realize his position. According to Chambers he suddenly became violent, but such an attitude by him would have been quite different to the pattern of his conduct in his contacts with the police earlier that day and later when he was seen still in the reception room by other officers including Inspector Brownlee. On those earlier occasions he had been voluble but on credible evidence and indeed as was

admitted by Chambers at least with respect to the episode at the stadium, Wright was not physically abusive, and any resistance he offered when Chambers grabbed him was of the most feeble type. When he had been thrown violently to the ground in the stadium, according to Best, he cried out, "I've had enough", and having been released he did not thereafter show any fight. At the police call-box on Bloor Street he offered the officers the keys of his car so they could use them for their purposes. I am satisfied that in the police station he continued to be voluble and used offensive language to Chambers, and Chambers resented it.

What form was it likely Chambers' resentment would take? We get considerable assistance in answering that question when we recall Mrs. Banfield's evidence as to what she heard on Bedford Road as Chambers escorted Griffin up that street. On that occasion Chambers resented Griffin referring to himself and the other officers as bastards, and he told Griffin he "would eat those words." Where did he intend that he should "eat" them? Perhaps that question requires no answer.

Keeping in mind, as I do, the intoxicated condition of Wright and Griffin, the extent and effect of which I have earlier described, I still cannot believe that their story as to what occurred in that reception room is a complete fairy tale.

Chambers admitted that he grabbed Wright around the neck. He had him on the floor with his arm still around his neck when the other officers arrived on the scene. He sought to justify himself by giving the excuse I have earlier related. Having rejected that excuse, as I think I must on the evidence, then Chambers is in the position of having used the physical force which he has admitted, without any excuse except the verbal abuse of his prisoner. Was that all the force he used? I do not think I would be either realistic or be giving sufficient weight to the evidence of Wright and Griffin if I concluded that it was. To simply grab Wright and

throw him to the floor would scarcely satisfy Chambers' resentment. To merely do that much would not be making Wright eat his words as Chambers intended Griffin should eat his. It is, of course, impossible to reconstruct every detail of the encounter, and, in my opinion, neither could Wright nor Griffin do so, but I think they were telling the truth when they swore that Chambers did strike Wright at least once and probably more than once.

I am not unmindful of the evidence that when Chambers released Wright and they both got to their feet, Chambers, in answer to Crawford's rather silly question, said that Wright had tried to hit him with the chair and that Wright did not deny it. Why should he deny it? To do so would get him nowhere except, perhaps, to incur Chambers' further wrath. Once again Wright had "had enough."

Neither am I unmindful of the fact that at no time while he was still in custody did he complain to any one of Chambers' conduct. However, at no time during that period was he in contact with anyone except police officers until he saw his lawyer, T. B. O'Neil, about eleven o'clock that night at No. 1 police station. O'Neil had known Wright before that date and when he saw him that night he had a red welt on his temple. As might be expected, about the first words O'Neil spoke to him consisted of an inquiry as to what had happened, and Wright's prompt reply was that he had been "beaten up" at No. 5 police station.

I think I should make it plain, if I have not already done so, that I am not in any way critical of the conduct of any other police officers at No. 5 station. I do not think they either joined with Chambers in his conduct toward Wright or countenanced it. It follows that, in my opinion, Wright's and Griffin's evidence that Sergeant Crawford also struck Wright is a fantasy, as is also their evidence that Chambers kicked him. If Wright suffered all the physical abuse that they described, he would have been almost a mass of bruises, which he was not.

Perhaps in that connection I should make a passing reference to the evidence of Inspector Brownlee. He is one of the inspectors at No. 1 station--that is, in No. 1 division--that being the division in which Varsity stadium is contained. He impressed me very favourably and I have not the slightest hesitation in accepting his evidence. He arrived at No. 5 station about six o'clock. He saw Wright sitting on the edge of the table in the reception room actually smiling, and in a mood quite inconsistent with what would be expected if thirty minutes earlier he had received a beating such as Wright and Griffin described.

However, if Wright had been violent, as Chambers described him, then certainly by that time all signs of it had disappeared.

Shortly after six o'clock Wright and Griffin were taken to No. 1 station.

There is no suggestion that they were physically mistreated there. They were duly booked in and placed in separate cells. However, they were held there actually incommunicado for several hours. Even their lawyer was refused permission to see them. This was a shocking situation, and I think I should give you considerable of the details, as to all of which there is little if any controversy.

Detective Nicolucci is attached to No. 1 Station and was on duty there that Saturday afternoon. About a quarter to six he received a message over the PX system in the station that "There had been some do at the Varsity Stadium and one of their officers had died and he had to go to No. 5 Station where two men were being held for investigation." Nicolucci went to No. 5 Station where he made some preliminary inquiries before the prisoners were transported to No. 1 Station. Then, accompanied by Chambers, Best and Spence, he returned to No. 1 Station. On their arrival, he sent Chambers, Best and Spence to his office with instructions to remain there until he arrived and "to talk to no one."

~~J~~ The sergeant in charge at No. 1 Station at that time was

Sergeant Agnew. Niccolucci went to him and "suggested" or "requested" that these prisoners be not allowed out on bail until he had completed the investigation. He also requested that they should not be allowed to talk to any one until he had completed the investigation. Later that night he took a statement from Chambers, Best and Spence. Those statements were filed as Exhibits 11 and 12 in the proceedings before me and are copied into the evidence at pp 1181 to 1184.

Meanwhile, Whitlock and Kascmar had got in touch with Wright's father and told him that Wright Jr. and Griffin had been arrested and were at No. 5 Station. About 6:15 p.m. they went together to No. 5 Station where the father learned that the prisoners had been taken to No. 1 Station. They then all went to No. 1. At No. 1 Station Wright Sr. spoke to Sergeant Agnew and learned from him that his son was there, charged with causing a disturbance. The father asked Agnew if he could see his son and was told, politely, that he could not; that he had been instructed to permit no one to see him until the police had completed their investigation. As showing what Agnew had in mind I extract the following from his evidence:-

"Q. What investigation were you referring to then?

A. I was referring to the policeman up at the University and the fact the detectives were determining whether these two boys charged with causing a disturbance would be charged in connection with that death."

and later:

" I imagined the police investigation would be over in say, three or four hours, several hours, something of that nature, a reasonable"

Wright Sr. thought, in the circumstances, he should consult a lawyer and he telephoned Mr. T. B. O'Neil, a practising solicitor, who agreed to meet him at the station about eight o'clock. Mr. O'Neil had planned to go to a hockey game that night and thought it advisable in the meantime to telephone the officer in charge of the police station to obviate any delay upon his arrival there. He called the station and P.C. Lindsay answered. Mr. O'Neil identified

himself as solicitor for the prisoner Wright, and said that he was leaving to go to the police station immediately and that he wanted to see his client when he got there. In that telephone conversation Lindsay did not indicate that Mr. O'Neil would not be permitted to see his client. The telephone conversation being completed, P.C. Lindsay told Agnew that Wright's solicitor, Mr. O'Neil, was on his way to the station to see his client.

It is plain from the evidence that Agnew was in some doubt as to whether he had any right to refuse Mr. O'Neil permission to see his client, because he telephoned to Sergeant Bond at No. 4 Station, who was apparently a more experienced sergeant, to get his opinion. Bond told Agnew "that he was not too familiar with that matter" and suggested that Agnew should telephone the Crown Attorney for advice, and he asked Agnew "to phone back and let him know the result of the conversation with the Crown Attorney". Agnew then telephoned Mr. F. I. Malone, Q.C., who is an Assistant Crown Attorney at Toronto, having occupied that position for about twenty years. I now quote Agnew's version of that telephone conversation:-

" I stated to Mr. Malone, as a result of a scuffle or during a scuffle at Varsity Stadium, a University policeman had died. We have two men arrested on charges, on the charge of causing a disturbance, and that the detectives requested that no one see them until their investigation was complete, and that a lawyer had phoned stating he was coming down to interview his clients. I asked him if I would be justified in refusing to permit the lawyer to see his client until the police investigation had been complete. He stated that, until the police investigation was finished and completed, no person could see the two men, Wright and Griffin."

Mr. Malone in the early part of his evidence did not disagree with that version. I now quote from that evidence:-

" Sergeant Agnew advised me that there were two men who had been apprehended at that time. He reported that a

stadium official at the Varsity Stadium had died as a result of some riot or melee that had taken place after the game. I asked him a few questions as to details. I believe he advised me that there was some scramble over a football. He then said that he had received a 'phone call from a lawyer, whom he did not name, about the possibility of seeing the clients.

I asked him what the charge was that had been laid, if any. At that point I do not believe the post mortem had been completed and I was of the impression that there was a potential charge of manslaughter pending.

There was some suggestion that the lawyer was on the way down to see his clients and would it be permissible to see them? I said 'Yes, it would be permissible for him to see them, but not until the police investigation had been completed'."

If that was the advice Mr. Malone gave Agnew, then, of course, it was wrong. The prisoner was entitled to the benefit of counsel whether the police had completed their investigation or not.

~~I cannot do better than quote from Mr. Malone's later evidence:-~~

" my advice to him was that the solicitor should see his clients, but not to interrupt the police investigation at that point."

" THE COMMISSIONER: Q. That is not what I gathered from your evidence. This is what you said. Maybe I have the wrong impression. 'I said it would be permissible to see his clients provided that the police investigation was completed'; and then you went on to say you assumed that probably the police were interviewing witnesses and so on?

A. That is correct.

Q. Why could a solicitor not see his clients while the policemen saw the witnesses?

A. Well, as a matter of fact, the procedure - there may have been some statement being taken at the time.

Q. From whom?

A. From the witnesses.

Q. Supposing there was. Has a man in custody not the right to see his counsel?

A. That is correct, and at no time did I suggest he could not see him.

Q. Well, certainly the impression you have left with me is that - and the impression you left with Agnew was that he could not see him until the police had completed their own investigation?

A. Well, the Sergeant may be in error there.

MR. MACDONALD: Q. The Commissioner is dealing with your version there in that observation?

A. Well, it was strictly a telephone conversation and at that point the charge was not clear. In fact, I did not know what the charge would be. The autopsy, I presume, had not been completed when I received the call from Sergeant Agnew.

Q. Well, does it come to this then; that until the autopsy was completed and until the police officials were in a position to decide whether it was - let us say - a minor or a major charge, your advice to Sergeant Agnew was that he would be not only quite in order but it would be the correct procedure for him to refuse to allow the solicitor to see the client?

A. Well, that would be up to the discretion of the Sergeant."

Agnew is an intelligent officer and I am satisfied that he did not misinterpret the meaning of what Mr. Malone said to him, and the latter acted in accordance with the advice he received.

Mr. O'Neil and Wright Sr. met at No. 1 Station about eight o'clock. Mr. O'Neil identified himself as solicitor to Wright Jr. and asked to see his client. Agnew told him he could not see him. Mr. O'Neil was surprised and said that he had a legal right to see him, and Agnew replied that O'Neil's "version differed with that of the Crown Attorney's," and explained that he had telephoned the Crown Attorney. Mr. O'Neil then asked the telephone number of the Crown Attorney whom Agnew said he had called, and Agnew, instead of telling him who that "Crown Attorney" was, said that "the Crown Attorney did not like to be disturbed at this hour of the night." Mr. Agnew, in his evidence, said he did not recall those remarks and doubted very much whether he made them. I accept Mr. O'Neil's evidence that they were made.

Having been blocked in his efforts to see his client at that point Mr. O'Neil went to the hockey game, intending to return to the station after the game and pursue his original purpose.

About 9:30 p.m. Griffin Sr. arrived at his home and learned from his wife, who had earlier learned from Whitlock, that their son was under arrest at No. 1 Station. He confirmed that fact by telephoning the station and he and his wife went to the station, arriving there about 10:10 o'clock.

There, he saw some officer, not identified in evidence by name,- I assume it was P.C. Lindsay. They identified themselves and asked what the charge against their son was and were told that until the result of the autopsy was known the charge wouldn't be definite, but, meanwhile, he was being held on a charge of creating a disturbance. The father then asked if he could see his son and was told that he could not. That officer, whoever he was, then drew Agnew's attention to the fact that these people were there inquiring about their son. Just at that moment Detectives Joyce and Small came into the room. Agnew called them over and identified Mr. and Mrs. Griffin to them and asked the detectives to talk to them about their son.

The parents went with these detectives to the detective office where they were given a reasonable summary of the facts as the detectives then apparently understood them. One or other of the parents

then asked: "What happens now? Can we arrange bail?", and they were told that could not be done before ten o'clock Monday morning. They asked if they could see their son and were told they could not until after the autopsy report was received.

There being nothing further they could then do, they went home.

Joyce, in his evidence, stated that at the time he was talking with Mr. and Mrs. Griffin he thought either Wright or Griffin might have been the man who was involved in the tussle with Cowie. It was then between 9:30 and 10:00 o'clock, and he and Small had, as I understand the evidence, already talked with Nicolucci who told them the stories related by Chambers, Best and Spence.

After the hockey game Mr. O'Neil returned to No. 5 Station, arriving there about 10:30 o'clock. Wright Sr. was waiting for him. At that time Sergeant Davies was in charge. Mr. O'Neil identified himself as solicitor to Wright and requested and obtained permission to see his client, and did see and confer with him.

By that time a second charge had been laid against both prisoners, viz: a charge of obstructing the police in the performance of their duties. That being an indictable offence, the prisoners were taken to police headquarters on College Street somewhere around midnight, where they were photographed and finger-printed.

Bail was arranged. Wright Sr., I think it was, telephoned Griffin's parents who went at once to the station and both prisoners were released on bail.

That completes the story of the arrest and custody of these men.

However, there is another piece of evidence to which I direct your attention. I think it is most important. It is contained in Sergeant Davies' evidence, and, without quoting it, this is the substance of it, viz:

That it is Sergeant Davies' understanding that the

police are entitled to refuse a lawyer permission to confer with his client who is in custody until the police investigation is complete, provided it is completed "in a reasonable length of time"; that the main reason for refusing permission is so that the prisoner may not have the opportunity of being told not to say anything; and that if a lawyer tells his client not to say anything, that is "a definite obstruction".

Thus it has been disclosed by the evidence in this case that there were two sergeants and a detective on the force who as of that date thought that practice was justified. Another sergeant, namely, Sergeant Bond "was not too familiar with that matter" but wanted to know what the Crown Attorney's opinion was. He got it from Sergeant Agnew, and what he was told was wrong. *✓*

On his release from custody, Wright, on the advice of his solicitor, went to the emergency department of the Northwestern General Hospital where he was examined by Doctor Dyer about two o'clock Sunday morning. The doctor found a swelling over his left mastoid bone and another swelling over the right temporal region of his skull. Wright was complaining of some pain in his back, but there was no objective evidence of injury in that area. The doctor gave it as his opinion that the injuries on the head could have been caused by a moderate blow by a blunt object such as a closed fist or a boot.

He examined him again on Monday and found a bruise on his left arm.

The injuries on the head were certainly consistent with the theory that he had been struck by Chambers' fist in that area.

It was submitted that they were also consistent with the theory that they had been caused when he was thrown to the ground in Varsity Stadium. Wright, of course, denied that they were caused by the fall and stated that they resulted from the blows struck by Chambers.

I have not a very firm conviction as to how they were caused, but I incline to the view that they were caused by the blows struck by Chambers. It seems to me that if his head had been injured in the fall there would have been evidence of a scratch or brush burn, and there was none.

The matters that you particularly requested me to investigate, inquire into and report to you upon were as follows:-

1. Whether unnecessary violence was used in making the arrests.

ANSWER: No.

2. Whether unnecessary violence was used during the detention of the arrested persons in Police Station No. 5.

ANSWER: Yes, on Wright only.

3. Whether the arrested persons were improperly denied the right to communicate with relatives or friends when detained at Police Stations Nos. 1 and 5.

ANSWER: At No. 1 - Yes. At No. 5 - No.

4. Whether the arrested persons were improperly denied the right to consult counsel when detained at Police Stations Nos. 1 and 5.

ANSWER: At No. 1 - Yes. At No. 5 - No.

5. Whether the arrested persons were detained for an undue length of time.

ANSWER: Yes.

~~II~~ The matters which you required me to investigate bear so vitally upon the liberties of the citizen that, at the possible risk of exceeding the terms of my reference or including in this report statements that you may think are unnecessary to it, I am persuaded to make these further observations.

It is fundamental to our way of life that the freedom of the individual must not be restricted except in so far as may be absolutely necessary. The freedom of which I speak is personal freedom under the law.

To protect the law-abiding citizen in the enjoyment of that freedom against those who, for any reason, would hinder or interfere with that enjoyment, we have police. They have often been referred to as the strong arm of the law, and by all right-thinking citizens are regarded as their friends. They are entitled to the respect and support of all citizens. One reason, and of course there is another, why they are put in uniform is to enable those who need their help to know exactly where to look for assistance. Frequently they have difficult tasks to perform and have to make quick decisions. The right type of policeman must have a sense of fair play, a calmness in emergency and, of course, a respect for the law and order which he is sworn to maintain. I think, by and large, we have such a body of men on the Toronto Police Force.

Unfortunately, I have felt impelled by the evidence I have heard to find that one officer on that force, under provocation, used unnecessary violence on his prisoner. I would hope that my finding would not reflect adversely on the other members of the force. I would hope, also, that if any of them might ever be tempted to yield to such provocation, they might call to mind this instance and resist it and thereby demonstrate that they have the qualities of efficient policemen.

They should also understand that it is their duty, once they arrest a citizen, to tell him at once the charge on which he is arrested. Arrested with or without a warrant, the subject is entitled to know why he is deprived of his freedom, if only in order that he may, without a moment's delay, take such steps as may enable him to regain it.

They should understand, too, that there can never be any justification for holding a prisoner incommunicado. We are told that such a practice exists behind the iron curtain. There is certainly no room for it under our system of freedom under the law. If that were permitted, then a citizen could simply disappear

for a day, or several days, and no one would know his whereabouts except the police who had him in custody. The prisoner, if he has to remain in custody, is certainly equally entitled, through his relatives or friends, to gather up evidence that will prove him innocent, as the police are entitled to gather up evidence that will prove him guilty.

The suggestion that any detective or other police officer is justified in preventing or attempting to prevent a prisoner from conferring with his counsel is a most shocking one. The suggestion that counsel, if he is permitted to confer with his client who is in custody, might thereby obstruct the police in the discharge of their duties is even more shocking. The prisoner is not obliged to say anything and the lawyer is entitled to advise him of that right.

The lawyer is an officer of the court and it is the function of the courts to administer justice according to law. To prevent an officer of the court from conferring with the prisoner who in due course may appear before it, violates a right of the prisoner which is fundamental to our system for the administration of justice.

U
All of which is respectfully submitted.

DATED this 23rd day of December, 1954.

"W. R. Mack"

Justice in Appeal of The Supreme Court
of Ontario.

IN THE MATTER OF Section 46 of
The Police Act, R.S.O. 1950,
Chapter 279,- and -

IN THE MATTER OF an investigation
as to the arrest and detention of

ROBERT WRIGHT

and

MICHAEL GRIFFIN.

R E P O R T

TO ;

THE HONOURABLE THE ATTORNEY GENERAL
FOR THE PROVINCE OF ONTARIO.

BY:

MR. JUSTICE W. D. ROACH.